

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:) **CASE NO. 09-02448-8-ATS**
)
JAMES R. HART, SR.) **CHAPTER 7 PROCEEDING**
)
DEBTOR(S).)

MOTION TO DISMISS CHAPTER 7 PROCEEDING
PURSUANT TO 11 U.S.C. § 707(b)(3)

Now comes the Bankruptcy Administrator for the Eastern District of North Carolina and moves the Court for an order dismissing the debtor's Chapter 7 case pursuant to 11 U.S.C. § 707(b)(3). The Bankruptcy Administrator supports the motion in the following:

GENERAL ALLEGATION AND JURISDICTION

1. The debtor filed a voluntary petition for Chapter 7 relief on March 26, 2009. On May 4, 2009, the debtors appeared at the first meeting of creditors, and said meeting was held and concluded. Based upon the petition, schedules and statement of affairs, the Bankruptcy Administrator believes that there will be no distribution of property to the estate.

2. Bankruptcy Rule 1017(e) requires that a motion to dismiss case due to abuse pursuant to 11 U.S.C. § 707(b)(3) must be filed within 60 days of the date of the first scheduled § 341 meeting of creditors. This motion is timely filed pursuant to B.R. 1017(e).

DEBTOR'S SCHEDULES, STATEMENT OF AFFAIRS AND FORM 22A

3. Debtor's schedules state that they have \$61,628.00 of secured debts, \$0.00 of priority unsecured debts, and \$182,830.00 of non-priority unsecured debts. Debtor's debts are primarily consumer debts.

4. The debtor is married and has no dependents.

5. On Schedule I of the debtor's petition, the debtor states that he is employed as a driver with Manheim Auto Auction. The debtor states that he earns \$632.67 per month in gross wages. He deducts on \$121.33 per month from his wages in the form of taxes. The debtor further receives \$1,400.00 per month in Social Security benefits. The non-filing spouse is a teacher at Wake County Public Schools. She earns \$6,109.00 per month in wages. She deducts from her wages the following: taxes (\$1,404.00), insurance (\$367.00), 401(k) (\$50.00), mandatory retirement (\$358.00) and life insurance (\$420.00).

The debtor states that his net monthly household income is \$5,421.34.

6. The debtor's expenses on Schedule J appear to be abnormally excessive. The debtor deducts \$800.00 per month for food. This amount appears to be abnormally high considering the household size. The debtor further deducts \$705.00 per month for an automobile payment. This amount appears to be excessive. The debtor deducts \$600.00 per month in transportation expenses. This amount is appears to be excessive. Lastly, the debtor deducts \$888.00 per month for mortgage on a beach trailer. The beach trailer does not produce income and appears to be a luxury item.

BASIS FOR DISMISSAL

7. The debtor's case should be dismissed pursuant to 11 U.S.C. § 707(b)(3)(B). The debtor's petition demonstrates that he has the ability to pay something to his creditors. Further, the debtor desires to retain his luxury item, and maximize his recreational

activities at the expense of his unsecured creditors. The totality of the debtor's financial circumstances demonstrates abuse.

WHEREFORE, the Bankruptcy Administrator respectfully moves the court for entry of an order which grants dismisses the debtor case pursuant to 11 U.S.C. § 707(b)(3); and any other relief that this court may deem just and equitable.

Respectfully submitted, this 26th day of June, 2009.

/s/ Marjorie K. Lynch
Marjorie K. Lynch
Bankruptcy Administrator

/s/ C. Scott Kirk
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Bankruptcy Administrator
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Ohio Supreme Court No. 0069617

CERTIFICATE OF SERVICE

I, C. Scott Kirk, of P.O. Box 3758, Wilson, North Carolina, 27895-3758, certify:
That I am, and at all times hereinafter mentioned was, more than eighteen (18)
That on the 26th day of June, 2009, I served copies of the foregoing document on the following:

Danny Bradford, Esq.
6512 Six Forks Rd., Suite 304A
Raleigh, NC 27615

Richard Sparkman
Chapter 7 Trustee
(notified electronically)

by electronic service via cm/ecf, and

by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail on June 26, 2009 to the following:

James R. Hart, Sr.
1728 Bethlehem Rd.
Knightdale, NC 27545

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 26th day of June, 2009.

/s/ C. Scott Kirk

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Bankruptcy Administrator
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